

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA

David Allen #150171
Plaintiff, Pro Se

2007 MAR 19 AM 10:01

VS.

Case NO: 2:06-CV-1020-T

Gwendolyn Mosley, et al.
Defendants.

TRaverse TO THE STATE'S SPECIAL REPORT

Comes Now, The plaintiff, David Allen, moves into this Honorable Court answer The Court March 14th 2007 Order. The plaintiff submits the following:

1). The Defendant Claim that the excessive physical force was done in good faith is bogus, because from his own Statement Defendant Knox's, he order the plaintiff to Shave as soon as the Shakedown was over. The plaintiff admits that he tried to explain himself to the defendant, by only say "I just Shaved last night." At no time did the defendant say that the plaintiff said to him that I'm not shaving. He only said I just shaved last night. For some reason the defendant says that he gave a direct order for the plaintiff to stand near the wall. Once again Capt. Knox never said that the plaintiff became hostile toward him. However He admit that after telling the plaintiff this he reached toward the plaintiff with his ~~hand~~ right hand. He then Claim that the plaintiff Shoved his hand away. (Keep in mind that all of this force was used, because the plaintiff just answer Capt. Knox Question about shaving, by only saying "I just Shaved last night")

After Capt. Knox Claim that the plaintiff Shoved his hand away. He admit that he "Grasped the plaintiff upper torso with both hands. After having the Daylights almost strangled out of him, the plaintiff tried to get away, not to be hostile, but to save his own life, because if he don't try to pull away Capt. Knox just might have strangled him to death. And any person this is happening to will try to get ~~away~~ away, even you your honor, with all do respect. After seen that the plaintiff was trying to save his own life, Capt. Knox, used force and pushed the plaintiff on the Concrete floor, and landed on top of him, causing him to hit his forehead on the Concrete floor. Once more all of this was done because the plaintiff said "I just Shaved last night." There was never a reason for Capt. Knox or any one else to use any force against the plaintiff. Capt. Knox and the other officer action was done maliciously and sadistically to cause harm to the plaintiff.

The Special Report Exhibit I the incident report Dated 11-07-06. The Defendant Capt. Knox lied, because in his special report he never said "He wrestled Inmate Allen to the floor." He only said he placed him on the floor. From his own words he used force to wrestled the plaintiff to the floor. Defendant Knox also lied about who put handcuffs on the plaintiff. In his lying Incident report he said Officer Larry McCovery placed to Cuffs on the plaintiff, but in the plaintiff bogus disciplinary Report, Capt. Knox said Officer Drake Cuffed the plaintiff. See plaintiff Exhibit A."

As this Honorable Court will see that the real reason Capt. Knox used excessive force against the plaintiff was because the plaintiff was trying to tell Capt. Knox he just had shaved last night, and Capt. Knox just don't want to hear that. So as from his statement under oath Capt. Knox said "Inmate Allen come in the dorm needed to shave. I asked him why he hadn't shaved and he started running off at the mouth. I ordered Inmate Allen did not stand against the wall, and kept running his ~~mouth~~ mouth. I gave him another order to get on the wall and he refused. I put Inmate Allen up against the wall and he physically tried to hit me, and pushed my ~~arm~~ arm away. I had to wrestle Inmate Allen down in 9 Dorm lobby." This Disciplinary Report is ~~also~~ in conflict with both Special Report on 12-R7-06, and Supplement Special Report on March 13th 2007. See Plaintiff Exhibit A, which shows Capt. Knox statement he gave out the disciplinary report.

2. The Defendant Masley, is warden at Easterling Corridor, and when any inmate say excessive force has been used against him, it must be report to I&I, who will come on see what happen. This never happen, because the Defendant never call I&I, they just had a officer from here to write a statement. Because Defendant Masley don't taken picture when asked of her at the Segregation board, and because she fail to report this to I&I she is ~~also~~ liable, because she help cover up a crime that

in her Camps that she had understood about.

3. The plaintiff had four broken ribs, and the reason they was not known of on Nov. 8, 2006, was because the plaintiff didn't get medical help like he should have. The Defendant are trying to use a improper body chart to say that the plaintiff didn't have four broken ribs it's bogus, because the body chart was done by a nurse who could not tell if that was broken or not. The Defendant admits that the plaintiff did have four broken ribs, which he don't have before Nov. 7, 2006. The plaintiff wrote the HCU by a Sick Call, tell them he ~~had~~ had one broken before and He know his ribs are broken. This does not mean that his rib was broken before Nov. 7, 2006, which are ~~now~~ now.

4. The Court must determine whether excessive force was used in good faith. see *Johnson vs. Breeden* 280 F.3d 1308 (11th Cir. 2002.)

5. The Defendants are not allow to plead immunity when a C.V. / right lawsuit alleging excessive force. See *Sk. Tich vs. Thornton* 280 F.3d 1295 (11th Cir. 2002). Thus, the Defendant are not entitled to qualified immunity, ~~and~~ or Summary of Judgment.

Conclusion

The plaintiff request that Summary Judgment ~~be granted~~ of the defendant be dismiss, because the Defendants fail to follow DOC rule about Claim of excessive force being Report to I&I and because the force use was done with the intent to cause harm, are not in good faith

Certificate of Service

I hereby certify that I served a copy of the foregoing upon the Defendants Counsel by placing it into Easterling Court. Fac. Mail box on March 15, 2007.
Lincoln David Allen
David Allen

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IN THE UNITED STATES DISTRICT COURT
FOR MIDDLE DISTRICT

David Allen #150171

VS.

Case NO: 2:06-LV-1020-T

Glendolyn Mobley, et. al.,

AFFIDAVIT

Before Me, The Under-Signed authority for the said County and State personally appeared the aforesaid, DAVID ALLEN, who is known to me, and after being duly affirmed deposed and says as follows:

I, David Allen, after being fully sworn deposes follows:

I, The plaintiff, David Allen file this affidavit along with my Traverse ~~and~~ and do hereby ~~swear~~ stated that foregoing is true and correct on March 15, 2007.

Pursuant to 28 U.S.C. 1746, I, David Allen, do ~~swear~~ hereby sign this Affidavit under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on: March 15, 2007

Lincoln David Allen

David Allen

ALABAMA DEPARTMENT OF CORRECTIONS
DISCIPLINARY REPORT

DISC. #06-757

1. INMATE: Allen, David CUSTODY: Medium AIS NO.: B/M 1501712. FACILITY: EASTERLING CORRECTIONAL FACILITY3. The above named inmate is being charged by Captain Jeffery Knox with violation of Rule #56, specifically Failure To Obey A Direct Order of An ADOC Official from Regulation # 403, which occurred on or about November 7, 2006 at (time) 9:00 (am), Location: Dormitory #9, B-Side. A hearing on this charge will be held after 24 hours from service.4. Circumstances of the violation(s) are as follows: On November 7, 2006, at approximately 9:00 AM, Captain Jeffery Knox ordered Inmate Allen, David, B/M 150171, to stand near the wall and stop talking. Inmate Allen failed to obey the order.5. 11 / 13 / 06 Date Jeffery Knox, COSII Arresting Officer / Signature / Rank
Jeffery Knox, COSII6. I hereby certify that I have personally served a copy of the foregoing upon the above named inmate and I informed inmate of his right to present a written or oral statement at the hearing and to present written questions for the witnesses on this the 13 day of November, 2006, at (time) 4:33 (am/pm)7. Pope John / COS Serving Officer / Signature / Rank David Allen #150171 Inmate's Signature / AIS Number8. Witnesses desired? NO YES David Allen Inmate's Signature9. If yes, list: Moses Jackson, the 2 riot team members that assisted Capt. Lt Lee10. Hearing Date 12-20-06 Time 4:15 pm Place Segregation Lobby

11. Inmate must be present in Hearing Room. If he is not present explain in detail on additional page and attach.

12. A finding is made that inmate (is / is not) capable of representing himself.

13. David Allen Not Guilty Guilty Signature / Hearing Officer

14. The Arresting Officer, Inmate, and all witnesses were sworn to tell the truth.

Signature / Hearing Officer

15. Arresting Officer's testimony (at the hearing): On the day in question, I was in 9 Dorm. Inmate Allen came in the dorm and needed to shave. I asked him why he hadn't shaved and he started running off at the mouth. I ordered Inmate Allen to stand against the wall. Inmate Allen did not stand against the wall, and kept running his mouth. I gave him another order to get on the wall and he refused. I put Inmate Allen up against the wall and he physically tried to hit me, and pushed my arm away. I had to wrestle Inmate Allen down in 9 Dorm Lobby, and Officer Drake came to assist me, and handcuffed Inmate Allen. Inmate Allen was escorted to HCU for a body chart, and locked up in SEG.

16. Inmate's Testimony: (See attached statement. Inmate Allen was removed from hearing for disruptive behavior).

Witness: Lt. Mary Lee Substance of Testimony: When I entered 9 Dorm Inmate David Allen was already in the lobby, getting ready to exit 9 dorm. I don't know what happened. (Lt. Lee gave testimony via telephone during hearing with Inmate Allen present).

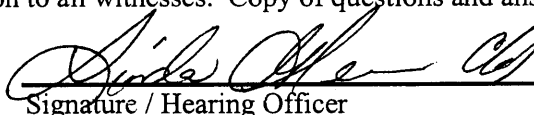
Witness: N/A

Substance of Testimony: N/A

Witness: _____

Substance of Testimony: _____

17. The Inmate was allowed to submit written question to all witnesses. Copy of questions and answers are attached.


Signature / Hearing Officer

18. The Following witnesses were not called - reason not called

1. Inmate Moses Jackson

No such inmate was found.

2. N/A

N/A

3. _____

19. After hearing all testimony, the Hearing Officer makes the following findings of fact: (Be Specific)

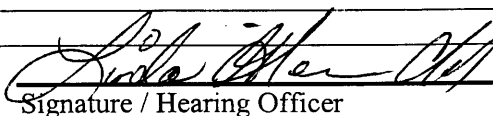
The Hearing Officer finds that: On 11/07/06, at approximately 9:00 PM, in Dorm 9, B-Side, Inmate David Allen, B/150171, did fail to obey an order given to him by Captain Jeffery Knox to stand near the wall and stop talking. Therefore, Inmate Allen was in violation of Rule #56-Failure to Obey a Direct Order of an ADOC Official.

20. Basis for Finding of Fact: Captain Jeffery Knox stated under oath that he ordered Inmate Allen to stand near the wall and stop talking, and Inmate Allen failed to obey the order. Inmate Allen's statement was not believable.

21. Hearing Officer's Decision: X Guilty
Not Guilty

22. Recommendation of Hearing Officer: 45 Days Disciplinary Segregation and 45 days loss of all privileges.

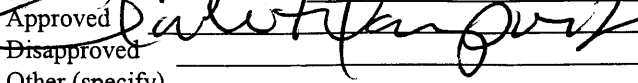
*Not earning good time.


Signature / Hearing Officer

Linda Glenn, COI

Typed Name and Title

23. Warden's Action - Date 21 DEC 2006

Approved 

Disapproved _____

Other (specify) _____

Reason if more then 30 calendar days delay in action. _____

25. I hereby certify that a completed copy of the foregoing Disciplinary Report was served on the above Named inmate on this the 30th day of December 2006, at (time) 12:01 (am / pm).

Danell Bell COI
Signature / Serving Officer / Title

Lincoln David Allen #150171
Inmate's Signature and AIS Number

3/19/2
Mr. Lincoln David Allen #150171 C1-40A

LEGAL MAIL

"This correspondence is forwarded from an Alabama State Prison. The contents have not been evaluated, and the Alabama Department of Corrections is not responsible for the substance or content of the enclosed communication."

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